

HOUSE BILL 1603

By Matheny

AN ACT to amend Tennessee Code Annotated, Title 29;  
Title 39 and Title 40, relative to copyrighted sound  
recordings.

WHEREAS, the State of Tennessee is the birthplace to generations of individuals and music recording companies whose home-grown achievements have created international celebrity and substantial contributions to the music repertoire of the western hemisphere; and

WHEREAS, many Tennessee-born individuals who created this legacy of sound recordings have works as popular today as when their first successful releases came to market; and

WHEREAS, the Sound Recordings Act of 1971 brought under federal copyright protection sound recordings created after February 15, 1972, and preserved legal jurisdiction of sound recordings created prior to this date under state law; and

WHEREAS, no fundamental revision of Title 17 of the copyright law of the United States has occurred since 1976; and

WHEREAS, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 (DPRA), a United States copyright law that grants owners of a copyright in sound recordings an exclusive right "to perform the copyrighted work publicly by means of a digital audio transmission"; and

WHEREAS, the United States Constitution provides copyright protections "[t]o promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries"; and

WHEREAS, the absence of federal copyright protection for sound recordings created prior to February 15, 1972, precludes owners, beneficiaries, and heirs to the useful arts and the

legacy of those sound recordings from participating in the fruits of their enterprise, otherwise covered under Title 17, Section 114 of the United States Code; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, is amended by adding the following language as a new chapter:

**29-40-101.** This chapter shall be known and may be cited as the "Legacy Sound Recording Protection Act".

**29-40-102.** As used in this chapter:

(1) "Copies":

(A) Means material objects, other than phonorecords, in which a work is fixed by any method now known or later developed, and from which the work can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device; and

(B) Includes the material object, other than a phonorecord, in which the work is first fixed;

(2) "Digital transmission" means a transmission in whole or in part in a digital or other non-analog format;

(3) "Fixed" means in a tangible medium of expression when its embodiment in a copy or phonorecord, by or under the authority of the author, is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration; provided, a work consisting of sounds, that is being transmitted, is "fixed" if a fixation of the work is being made simultaneously with its transmission;

(4) "Perform" means to recite, render, play, dance, or act, either directly or by means of any device or process;

(5) "Phonorecords":

(A) Means material objects in which sounds are fixed by any method now known or later developed, and from which the sounds can be perceived,

reproduced, or otherwise communicated, either directly or with the aid of a machine or device; and

(B) Includes the material object in which the sounds are first fixed;

(6) "Publicly" means:

(A) At a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered; or

(B) Communicated to a place, described in subdivision (6)(A) or to the public, by means of any device or process, whether the members of the public capable of receiving the sound recording receive it in the same place or in separate places and at the same time or at different times;

(7) "Sound recording" means a work that results from the fixation of a series of musical, spoken, or other sounds; and

(8) "Transmit" means to communicate by any device or process, now known or later developed, whereby sounds are received beyond the place from which the sounds are sent.

**29-40-103.**

(a) The owner of copyright of a sound recording initially fixed on or before February 15, 1972, has the exclusive right to:

(1) Reproduce the sound recording in copies or phonorecords;

(2) Prepare derivative works based upon the sound recording;

(3) Distribute copies or phonorecords of the sound recording to the public by sale or other transfer of ownership, or by rental, lease, or lending; or

(4) Perform the sound recording publicly for profit by means of a digital or satellite audio transmission.

(b) In addition to any other penalty provided by law, including § 39-14-139, there is created under this section a civil cause of action for an owner of copyright of a sound recording initially fixed on or before February 15, 1972, against any person or legal entity that performs the actions described in subdivisions (a)(1)-(4) without the owner's express permission.

**29-40-104.**

(a) Except as otherwise provided in this chapter, it is not an infringement of copyright for a library or archives, or any of its employees acting within the scope of their employment, to reproduce no more than three (3) copies of a phonorecord, if:

(1) The reproduction or distribution is made without any purpose of direct or indirect commercial advantage;

(2) The collections of the library or archives are:

(A) Open to the public; or

(B) Available not only to researchers affiliated with the library or archives or with the institution of which the library or archives are a part, but also to other persons doing research in a specialized field.

(b) The rights of reproduction and distribution under this section extend to the isolated and unrelated reproduction or distribution of a single copy or phonorecord of the same material on separate occasions, but do not extend to cases where the library or archives, or its employee:

(1) Is aware or has substantial reason to believe that it is engaging in the related or concerted reproduction or distribution of multiple copies or phonorecords of the same material, whether made on one (1) occasion or over a period of time and whether intended for aggregate use by one (1) or more individuals or for separate use by the individual members of a group; or

(2) Engages in the systematic reproduction or distribution of single or multiple copies or phonorecords of material; provided, nothing in this subdivision (b)(2) prevents a library or archives from participating in interlibrary arrangements that do not have, as their purpose or effect, that the library or archives receiving such copies or phonorecords for distribution does so in such aggregate quantities as to substitute for a subscription to or purchase of such work.

(c) This chapter does not limit, annul, or diminish in any respect any rights, exclusive or otherwise, in sound recordings fixed before February 15, 1972, existing under Tennessee statutory or common law. The codification of rights under § 29-40-103 that give rise to statutory causes of action for infringement shall not limit other causes of action for infringement under either Tennessee statutory or common law.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it, and applies to prohibited conduct occurring on or after the effective date of this act.